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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McLaughlin Gormley King Company,

Petitioner,

Cancellation No. 92044835

v.

Agriguard Company, LLC

Respondent,

ANSWER

Agriguard Company, LLC ("Registrant") answers the Petition to Cancel as follows:

1. Admitted.
2. Admitted.
3. Registrant is without sufficient information to admit or deny the allegation. Accordingly, the allegation is denied.



4. Registrant is without sufficient information to admit or deny the allegation. Accordingly, the allegation is denied.

5. Admitted.

6. Registrant is without sufficient information to admit or deny the allegation. Accordingly, the allegation is denied.

7. Registrant is without sufficient information to admit or deny the allegation. Accordingly, the allegation is denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied except to the extent that Petitioner's mark is composed of nine letters and Respondent's mark is composed of ten letters.

12. Denied.


13. Denied.

14. The respective marks do not look alike, sound alike or have any similarity in meaning sufficient to cause any reasonable likelihood of confusion, mistake or deception as to origin.

Therefore, Respondent respectfully requests that U.S. Registration No. 2,882,139 be maintained and that this petition to cancel be dismissed.


Respectfully submitted,

January 9, 2006
Date

By 
Allen R. Kipnes, Esq.
Registration No. 28,433
WATOV & KIPNES, P.C.
P.O. Box 247
Princeton Junction, NJ 08550
(609) 243-0330
(609) 275-1010 - Facsimile
Attorney for Respondent
Agriguard Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER was mailed first-class mail, postage prepaid to Samuel T. Lockner, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402, attorneys for Opposer, this 9th day of January, 2006.


Allen R. Kipnes, Esq.
Attorney for Respondent

C:\100\118\1188001.Answer

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McLaughlin Gormley King Company,

Petitioner,

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v.

Agriguard Company, LLC

Respondent,

**MOTION TO SHOW CAUSE WHY JUDGEMENT
BY DEFAULT SHOULD NOT BE ENTERED**

Agriguard Company, LLC ("Agriguard") hereby moves to withdraw a holding of default or in the alternative to vacate a judgment of default in connection with the above-identified cancellation proceeding on the ground that Agriguard did not timely receive the petition to cancel and has been engaged in good faith negotiations with Petitioner, McLaughlin Gormley King Company ("McLaughlin") in a related opposition proceeding concerning very similar issues. Default herein may serve to prevent or delay settlement of said opposition proceeding and a proper resolution of all matters.

1. Agriguard is the record owner of U.S. Registration No. 2,882,139 ("Registration") for the mark MULTIGUARD covering pesticides for agricultural and horticultural use in International Class 5 which is the subject of the present cancellation proceeding. Agriguard is also the record owner of U.S. Trademark Application Serial No. 48/445,584 for the related mark MULTIGUARD PROTECT covering pesticides for agricultural and horticultural use in International Class 5.

2. On information and belief, Agriguard filed a petition to cancel said Registration for the mark MULTIGUARD on August 16, 2005.

3. On information and belief, the U.S. Patent and Trademark Office acknowledged the petition to cancel on August 17, 2005 and set forth discovery and testimony periods for the cancellation proceeding.

4. On information and belief, the petition to cancel was not received by Agriguard nor was it received by Agriguard's attorney, Coleman Reap, Esq., who was responsible for the filing and prosecution of the application which resulted in Registration.

5. On or shortly before September 8, 2005, the undersigned spoke with attorney, Coleman Reap, Esq. about performing legal services on behalf of Agriguard and particularly about assuming responsibility for representing

Agriguard in trademark opposition No. 91166236 brought by McLaughlin regarding U.S. Trademark Application Serial No. 78/445,584 for the mark MULTIGUARD PROTECT covering "pesticides for agricultural and horticultural use" in International Class 5 ("Application"). On September 23, 2005, the undersigned forwarded a proposal for settling the opposition proceeding to Mr. Sam Lockner, attorney for McLaughlin which called for limiting the goods covered under the Application and use thereof to "nematicides and fungicides for agricultural and horticultural use". At no time did Mr. Lockner mention the filing of the petition to cancel against Agriguard's Registration.

6. On or shortly before October 21, 2005, the undersigned contacted the attorney for McLaughlin to discuss the status of the settlement proposal and was advised they had not yet received a response from McLaughlin. The parties stipulated to a thirty day extension of time to answer the notice of opposition until November 24, 2005. On or shortly before November 21, 2005, the undersigned communicated with the attorney for McLaughlin to find out the status of the settlement proposal and to obtain a further stipulated thirty day extension of time.

7. On or shortly before November 21, 2005, the undersigned learned of the petition to cancel the Registration which was well after the time for filing an answer or motion to extend time to answer. The undersigned immediately called the attorney for McLaughlin and expressed Agriguard's interest in resolving all matters pertaining to the Registration and Application and particularly to limit the

Registration to the same proposed description of goods as offered for the opposed Application (i.e. nematicides and fungicides for agricultural and horticultural use) because of the close similarities of the marks MULTIGUARD and MULTIGUARD PROTECT and issues in connection therewith. The attorney for McLaughlin did indicate some encouragement that McLaughlin favored a resolution of these matters along the lines set forth in Agriguard's proposal.

9. The attorney for McLaughlin indicated that a formal proposal for settlement was being prepared that would take into account Agriguard's proposal of limiting the description of goods but that no decision has been made to incorporate the same description for the Registration.

10. The undersigned was told that a settlement proposal from McLaughlin was expected by the end of December. The proposed settlement was received on January 5, 2006 and was immediately conveyed to Agriguard. The settlement proposal included a provision which stated the pertinent part "Agriguard agrees not to use its MULTIGUARD mark, as depicted in the Registration on any goods or services other than the goods listed in Paragraph 1, namely, "nematicides and fungicides for agricultural and horticultural use" (Registration refers to Agriguard's Registration No. 2,882,139).


11. Thus, the proposed terms offered by both parties included a revision of the description of the goods set forth in Agriguard's Registration No. 2,882,139.

12. Agriguard submits that the granting of this motion is proper because a) the failure to timely file an Answer to the petition to cancel was not the fault of Agriguard, b) subsequent to the time for filing an answer both parties were and continue to be engaged in settlement discussions in which Agriguard's Registration and its mark MULTIGUARD are part of those discussions and c) the granting of this motion would not work an injustice on the part of McLaughlin in view of the continuing settlement discussions.

13. Agriguard has filed concurrently herewith an answer to the petition to cancel.


Respectfully submitted,

January 9, 2006
Date

By 
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Attorney for Respondent
Agriguard Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO SHOW CAUSE WHY JUDGEMENT BY DEFAULT SHOULD NOT BE ENTERED was mailed first-class mail, postage prepaid to Samuel T. Lockner, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402, attorneys for Opposer, this 9th day of January, 2006.


Allen R. Kipnes Esq.
Attorney for Respondent